IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2289 OF 1998.

1. M/s.Jinal Super Dal Mills
   a partnership firm, registered
   under the Partnership Act and
   having their office at 2604, Nayi
   Basti, Naya Bazar, Delhi 110 006.

2. M/s.National Insurance Co.Ltd.,
   a body corporate, subsidiary of
   General Insurance Corporation of
   India having their registered
   office at 3, Middleton Street,
   Calcutta 700 071, and one of their
   Delhi D.O.No.XIX, at Laxmi Tower,
   Nainiwala Bagh, Azadpur Commercial
   Complex, Delhi 110 033, and their
   Mumbai D.O.No.XII at Sheel Chamber
   3rd floor, 10, Cawasji Patel
   Street, Mumbai 400 023. ... Plaintiffs.

Versus.

M/s.Continental Liner Agencies,
a foreign Shipping Company,
incorporated in Bangladesh and having
their office at Facy Building, 3rd floor,
87, Agrabad C/A, Chittagong, Bangladesh
and carry on their business in Mumbai
through their Agents M/s.Sai Freight
Pvt.Ltd., Vohra House, 14/16, Surat
Surat Street, Dana Bander,
Mumbai 400 009. ,... Defendant.

Shri V.S.Amin i/by M/s.V.S.Amin & Co.for the Plaintiffs.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 31st July, 2007.

ORAL JUDGMENT.:

1. This suit is listed on the board under the caption of "Undefended suits for exparte decree". The learned Counsel for the Plaintiffs has tendered on

record an affidavit in lieu of evidence of Mrs.Maithili Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The affidavit is marked "X" for identification and is taken on record. The Plaintiffs have also tendered the original documents along with a list. The original documents along with the list are marked "Y" (collectively) for identification and the same are taken on record.

2. The 1st Plaintiff is a registered partnership firm and the 2nd Plaintiff is an Insurance company. The Defendant is a shipping company incorporated in Bangladesh and having management, control, possession and coverage of m.v. "Al-Muztuba" and carries on business of carrier of goods by sea for consideration. According to the Plaintiffs, the Defendant is carrying on its business in Mumbai through its agents M/s.Sai Freight Pvt.Ltd. having its office at Mumbai.

3. M/s.Agrocorp International Pte.Ltd. having its office at Singapore sold in favour of the 1st Plaintiff 9953 bags of Black Matpe for a total sum of US $172,143.07. The said shipper issued invoice dated 10th May 1997 which was presented to the 1st Plaintiff through the State Bank of Mysore, Delhi. The Defendant issued bill of lading dated 10th May 1997 evidencing that 9953 bags of Black Matpe were shipped in a sound

condition for its safe and timely delivery at Mumbai. The 1st Plaintiff paid the amount under the invoice against negotiation of the bill of lading to the said bank and thus obtained a title to the consignment.

4. After the consignment arrived at Mumbai Port, M/s.V.Arjoon, Mumbai, the clearing agents of the 1st Plaintiff found that 1133 bags were landed in torn/slack condition and were mixed with dirt and other foreign matter. The Bombay Port Trust authorities issued a remark list certificate dated 20th August 1997 to the Clearing Agents of the 1st Plaintiff stating that out of 9953 bags, 1133 bags landed in torn and slack condition. Thereafter on the request of the 1st Plaintiff's Clearing Agents a joint survey of the torn and slack condition of the bags and refilling was carried out by M/s.Metcalfe & Hogdkinson (Pvt.) Ltd. Mumbai on behalf of the Defendant. The survey report dated 5th July 1997 found shortage/damage in 753 bags.

5. The 1st Plaintiff by its letter dated 18th October 1997 addressed to the Defendant's agents in Mumbai lodged a claim for the sum of Rs.1,91,005/- for the loss suffered by the Plaintiffs. Though the claim was duly received by the Agents of the Defendant, there was no response from the Defendant.

6. The 1st Plaintiff had insured the aforesaid consignment of 9953 bags with the 2nd Plaintiff for transit risk from the Port of loading to Mumbai vide Insurance Policy dated 19th May 1997. After the 1st Plaintiff lodged the claim for Rs.1,58,234/- with the 2nd Plaintiff, the said amount was paid by the 2nd Plaintiff to the 1st Plaintiff. Thereafter on 23rd March 1998, the 1st Plaintiff executed in favour of the 2nd Plaintiff a letter of subrogation as well as a special power of attorney authorising the 2nd Plaintiff to recover the amount of loss suffered by the 1st Plaintiff. Accordingly the present suit has been filed for recovery of the sum of Rs.1,58,234/- with further interest at the rate of 18% per annum.

7. The Plaintiffs have placed on record the following original documents; viz. (i) Invoice dated 10th May 1997; (ii) bill of lading dated 10th May 1997 issued by the Defendant; (iii) Remark list certificate dated 20th August 1997; (iv) Survey report dated 5th July 1997 of M/s.Metcalfe & Hogdkinson (Pvt.) Ltd. Mumbai; (v) Letter of subrogation dated 23rd March 1998 executed by the 1st Plaintiff in favour of the 2nd Plaintiff; and (vi) Special power of attorney of the same date executed by the 1st Plaintiff in favour of the 2nd Plaintiff. The said documents and the office copy of letter dated 18th October 1997 sent by the 1st

Plaintiff to the Agents of the Defendant have been duly proved by the affidavit in lieu of evidence of Mrs.Maithili Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The claim in the suit is also proved by the said affidavit.

8. In the circumstances, a case is made out for passing a decree in favour of the Plaintiffs. Considering the facts and circumstances, the interest will have to be fixed at 9% per annum.

9. Hence there will be a decree in terms of prayer clauses (a) and (b) with a modification that the interest at the rate of 9% per annum will be payable from the date of filing of the suit till realisation or payment.

10. The Plaintiffs will be entitled to refund of Court fees, if any, in accordance with the rules.

11. Certified copy is expedited.

Judge.